

Application No. 10/052,441
Amendment dated February 3, 2006
Reply to Office Action of September 6, 2005

REMARKS/ARGUMENTS

Claims 1-23 are pending in the application. Claims 1-23 are rejected. Claims 1-3, 5, 8-10, 12, 15-20, 22 and 23 are rejected under 35 U.S.C. § 102(e) as being anticipated by Fiske. Claims 4, 11 and 21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fiske in view of Apfel (U.S. Patent No. 5,974,454). Claims 6, 7, 13 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fiske in view of Kraml (U.S. Patent No. 6,493,594).

Applicants gratefully acknowledge the withdrawal of all of the previous 35 U.S.C. §112 rejections.

Applicants further respectfully submit the cited references do not teach suggest or disclose “[a] method ...comprising: upgrading the first software component to an upgraded version; and validating the performance of the upgraded first software component, *said validating comprising translating messages originating at the first software component from an upgraded version format to a current version format*” (e.g., as recited in claim 1).

The Office Action asserts column 3, lines 54-62 of Fiske as discloses validating as comprising translating messages originating at the first *software* component from an upgraded version format to a current version format. Applicants disagree. Column 3, lines 54-62 state:

On the processor, a procedure may be running which is triggered every time that new data is received by the processor and checks to see if an executable file is present. The processor then *unpacks the upgrade materials* which may involve decompression of the files and the processor performs consistency checks on the files. *Consistency checks are performed to establish the compatibility of the revision and also to verify that the files are authorized upgrades (emphasis added).*

The cited section of Fiske does not teach suggest or disclose translating messages originating at the first software component from an upgraded version format to a current version

Atty. Docket No. 2207/13057

Application No. 10/052,441
Amendment dated February 3, 2006
Reply to Office Action of September 6, 2005

format. The cited section of Fiske merely discloses unpacking of "upgrade materials" and vaguely disclosed "consistency checks". Applicants submit performing a consistency check (merely establishing and verifying compatibility) as disclosed in Fiske is not the equivalent of translating *messages* originated at a first software component. Indeed, the cited section of Fiske does not disclose *translating messages* (as specifically recited in the embodiment of claim 1) at all.

Next, the Office Action cites column 4, lines 52-67 as disclosing translating messages originating at the first software component from an upgraded version format to a current version format at column 4, lines 52-67. Furthermore, the Office Action asserts that Fiske teaches that if the upgrade running on the first processor contains new messages in the protocol, the upgrade will run in compatibility mode, which consists of sending messages to the second processor that were previously recognized or translated by the second processor (*emphasis added*). Applicants disagree. Column 4, lines 52-67 state:

In step 310, the second processor of the server cluster which is running a version of the currently running program on the first processor is informed that an upgrade is about to occur on the first processor. The first processor sends information relating to the upgrade so that the second processor can confirm that it is running a compatible version of the upgraded software. A compatible revision contains modifications that can be run on one processor while the partner processor is running a prior revision. If the upgrade contains new messages in the protocol, the upgrade may be run in compatibility mode. *In compatibility mode, the upgraded program sends only messages which are recognized by the previous version of the software.* If there are minor additions to the program the system and method of U.S. patent application entitled Revision Compatibility Between Programs Ser. No. 09/213,073, ... (*emphasis added*)

Applicants submit the Fiske reference teaches after the second processor is informed that a update is about to occur on the first processor, the first processor runs a compatible revision while the second runs a prior revision. Fiske goes on to disclose that if, then, communication

Atty. Docket No. 2207/13057

Application No. 10/052,441
Amendment dated February 3, 2006
Reply to Office Action of September 6, 2005

between the two is necessary, the upgraded processor (i.e., the first processor) sends to the processor running the prior or previous version (i.e., the second processor) "...only messages which are recognized by the previous version of the software".

For the purpose of this response, Applicants are assuming that the Office Action's use of the term "previously recognized" is the equivalent of the Fiske description "messages which are recognized by the previous version of the software" quoted above. If so, Applicants submit the Office Action's attempt to equate "previously recognized" messages with that of "translated" messages is improper. See page 10, line 6 of recent Office Action. The sending of messages already recognized by the current program requires no further translation. As shown above, Fiske *sends only* messages recognized by the previous version. Therefore Fiske does not disclose, and in fact teaches away from a validation process requiring translation of messages from an upgraded version format to a current version format between a first and second software component as described in embodiments of the embodiments of the present application. Therefore, Fiske is inadequate to support a proper 35 U.S.C. 102(e) rejection.

Apfel fails to make up for the deficiencies of Fiske. Although Apfel is directed towards installing and updating program module components, it does not disclose at least validating the performance of a first software component, the validating comprising *translating messages originating at the first software component from an upgraded version format to a current version format.*

Kraml fails to make up for the deficiencies of Fiske as well. Kraml is directed generally toward software configuration, not rolling upgrades, and does not disclose the relevant limitations as well.

Atty. Docket No. 2207/13057

Application No. 10/052,441
Amendment dated February 3, 2006
Reply to Office Action of September 6, 2005

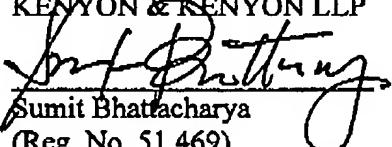
Applicants respectfully submit that since each and every element is not taught, suggested or disclosed by the cited reference, 102(e) rejection of claim 1 should be withdrawn. Independent claims 9, 18 and 22 include substantively similar limitations and therefore should be allowed for the same reasons. Claims 2-8, 10-17, 19-21, and 23 depend from allowable independent claims, and therefore should be allowed as well.

For at least all the above reasons, the Applicants respectfully submit that this application is in condition for allowance. A Notice of Allowance is earnestly solicited.

The Examiner is invited to contact the undersigned at (408) 975-7500 to discuss any matter concerning this application. The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to Deposit Account No. 11-0600.

Dated: February 3, 2006

By:

Respectfully submitted,
KENYON & KENYON LLP

Sumit Bhattacharya
(Reg. No. 51,469)
Attorneys for Intel Corporation

KENYON & KENYON LLP
333 W. San Carlos St., Suite 600
San Jose, CA 95110
Telephone: (408) 975-7500
Facsimile: (408) 975-7501

Customer No. 25693